

BOARD OF APPEALS CASE NO. 4946

*

BEFORE THE

APPLICANT: Taylor's Point, Inc. and
Taylor's Point LLC

*

ZONING HEARING EXAMINER

REQUEST: Variances to permit a gate-
house and permanent residential entrance
sign within the required setbacks;
428 Shore Drive, Joppa

*

OF HARFORD COUNTY

*

Hearing Advertised

*

Aegis: 7/14/99 & 7/21/99

HEARING DATE: September 8, 1999

*

Record: 7/16/99 & 7/23/99

* * * * *

ZONING HEARING EXAMINER'S DECISION

The Applicants, Taylor's Point, Inc. and Taylor's Point LLC, are requesting a variance to Section 267-36(B), Table VII, and Section 267-26(C)(4) of the Harford County Code, to construct a gatehouse within the required front yard. The Applicants are also requesting a variance to Section 219-7(K) of the Harford County Sign Code, to allow a permanent residential entrance sign to be within the 10 foot right-of-way and more than 6 feet in height.

The subject property is located at 428 Shore Drive in the First Election District. The property is identified as Parcel Nos. 177, 178, 180 and 267, in Grid 2-A, on Tax Map 69. The property contains 4.47 acres, all of which is zoned R4.

Mr. Torrence Pierce, a professional engineer with Frederick Ward Associates, Inc., testified as an expert in the field of engineering and site planning. He said the property is currently split-zoned R3 and R4 and has record plat approval for 14 lots, the majority of which are situated directly on the Gunpowder River. He testified the lot which is the subject of the variance request is Lot 4, which is located along Shore Drive at the entrance to the subject property. He said the proposed gatehouse is to be situated at the entrance to the waterfront development and will serve as an architectural focal point for the project. It will not be occupied or used for any commercial purpose. He said that due to the configuration of lots and the angle of the intersection, it is not feasible to locate the gatehouse behind the building setback on Lot 4. Mr. Pierce stated that, in his opinion, the subject property is unique in that it is essentially a peninsula and is surrounded on 3 sides by the Gunpowder River. He also said that the property is encumbered by the Chesapeake Bay Critical Area designation.

Case No. 4946 - Taylor's Point, Inc. and Taylor's Point LLC

Mr. Pierce also pointed out that in prior Board of Appeals Case No. 4403, variances were approved to disturb the Critical Area Buffer and it was found that the property had unique topographic features, including the existence of a power line easement and the irregular shape of the parcel, which is surrounded by water. Mr. Pierce reviewed the site plan for the property (Petitioner's Exhibit No. 5), along with the plan for the gatehouse. In order to construct the gatehouse in the proposed location, it is necessary to locate it within the front yard of Lot 4 and within the 10 foot right-of-way. Due to the architectural design of the gatehouse, it is necessary to exceed the 6 foot height limitation. Mr. Pierce reviewed the photographs (Petitioner's Exhibit No. 7), which illustrates the type of gatehouse to be constructed. Mr. Pierce went on to testify that the literal enforcement of the Zoning Code would result in practical difficulty and unreasonable hardship in that given the unique characteristics of the property, the Applicant would be unable to construct the gatehouse without approval of the requested variances.

Mr. Pierce concluded his testimony by saying that, in his opinion, the granting of the variance would not be substantially detrimental to adjacent properties and would not materially impair the purpose of the Code.

Mr. Anthony S. McClune, Manager, Division of Land Use Management for the Department of Planning and Zoning, appeared and reviewed the Department's Staff Report (Exhibit No. 6). Mr. McClune said the Department of Planning & Zoning recommended that the variances be approved, subject to three conditions set forth in the Staff Report. Mr. McClune further stated that, in his opinion, the literal enforcement of the Code would result in practical difficulty and unreasonable hardship and the granting of the variance would not be substantially detrimental to adjacent properties and would not impair the purpose of the Code and the public interest.

Mr. Robert T. Nadler, an adjoining property owner, appeared and expressed concern about run-off from the subject property. On cross-examination, Mr. Nadler was asked if he opposed the Applicant in 1994 when the Applicant sought variances to disturb the Critical Area Buffer and create panhandles.

Case No. 4946 - Taylor's Point, Inc. and Taylor's Point LLC

Mr. Nadler testified that he did not oppose the Applicant at that time; however, a reading of Paragraph 3 on Page 3 of the Zoning Hearing Examiner's decision in Case No. 4403 (Petitioner's Exhibit No. 3) states: "Mr. Robert T. Nadler appeared in opposition to the request."

CONCLUSION:

The Applicants are requesting the following:

1. A variance to Section 267-34(B), Table VII, and Section 267-26(C)(4) of the Harford County Code to construct a gatehouse within the required front yard.
2. A variance to Section 219-7(K) of the Harford County Code to allow a permanent residential entrance sign to be within 10 feet of the right-of-way, and
3. A variance for a residential entrance structure (gatehouse) to be more than 6 feet high in an R4 District.

Section 267-36(B), Table VII, requires a 25 foot front yard setback. Section 267-26(C)(4) provides:

"No accessory use or structure shall be established within the required front yard, except agriculture, signs, fences, walls or parking area and projections or garages as specified in §267-23(C), Exceptions and modifications to minimum yard requirements."

Section 219-7(K) provides:

"Permanent residential entrance or development project identification signs. Residential entrance or development project identification sign with letters or advertising area not to exceed a total area of thirty-two (32) square feet shall be permitted on the property, provided that it is located not less than ten (10) feet from the road right-of-way line. In addition, the height of the sign or structure shall not exceed six (6) feet. If the parcel or lot has a multiple frontage of at least fifty (50) feet, additional signs with letters or advertising area not to exceed a total of thirty-two (32) square feet shall be permitted. Such sign or structure shall not exceed six (6) feet in height and shall not be located less than ten (10) feet from the road right-of-way. Said signs may be split entrance signs; however, the overall advertising area may not exceed the thirty-two (32) square feet."

Case No. 4946 - Taylor's Point, Inc. and Taylor's Point LLC

Both witnesses who testified agreed that the property was unique and the literal enforcement of the Zoning Code would result in practical difficulty and unnecessary hardship. Both witnesses also testified that the granting of the variance would not be detrimental to adjacent properties and would not impair the purpose of the Code or the public interest. In Board of Appeals Case No. 4403, it was found that the subject property was unique due to its waterfront location, irregular shape, and its topographic conditions and power line easement.

The testimony by Mr. McClune indicates that the angle of the intersection of Shore Drive and Anchor Drive create an angle which makes it impossible to locate the gatehouse without variance approval.

The only protestant to testify expressed concern about surface water run-off from the Applicant's property which was not an issue in this hearing.

The standard for granting a variance is whether the strict compliance with the zoning ordinance regulations would result in practical difficulty or unreasonable hardship. McLean v. Soley, 270 Md. 208, 310 A.2d (1973). The Court has stated that practical difficulty or unreasonable hardship means difficulty or hardship which are peculiar to the situation of the Applicant for the permit. Carney v. City of Baltimore, 201 Md. 130 (1952).

In Anderson v. Board of Appeals, Town of Chesapeake Beach, 22 Md. A.P. 28, 322 A.d., 220 (1974), the Court of Special Appeals set forth the criteria to prove practical difficulty for an area variance:

1. Whether strict compliance with the requirements would unreasonable prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome;
2. Whether a grant of the variance applied for would do substantial justice to the Applicant as well as other property owners in the district, or whether a lesser relaxation than that applied for would give substantial relief; and
3. Whether relief can be granted in such fashion that the spirit of the ordinance will be observed and public safety and welfare secured.

Case No. 4946 - Taylor's Point, Inc. and Taylor's Point LLC


The evidence produced by the Applicant indicates that the criteria as set forth in the McLean and Anderson cases can be met. The strict compliance with the front yard setback, right-of-way requirement and height limitation would make it impossible to construct the gatehouse as proposed. Due to the unique characteristics of the property, it is impossible to relocate the gatehouse to another area since it is designed to be the gateway to the new waterfront community.

Clearly, when the test for a variance as set forth in McLean is applied, one can conclude that strict compliance with the setback and height requirements would result in practical difficulty and unreasonable hardship. Furthermore, the testimony demonstrated that the granting of the variance will not be substantially detrimental to adjacent properties and will not materially impair the purpose of the Code or the public interest.

Therefore, it is the recommendation of the Hearing Examiner that the requested variances be approved, subject to the following conditions:

1. That the Applicant obtain all necessary permits and inspections for the proposed gatehouse, sign and fence.
2. The proposed sign and fence shall meet all other area and height requirements.
3. The gatehouse shall be constructed in general compliance with the rendering submitted and identified as Attachment 4-B to the Staff Report.

Date NOVEMBER 8, 1999


L. A. Hinderhofer
Zoning Hearing Examiner